



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1995

Mr. Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR95-1367

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27356.

The Coppell Police Department (the "department") received a request for an information report concerning two juveniles. The department contends that the requested information may be excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The department claims that "[s]ince Chapter 51 of the Texas Family Code provides, with limited exceptions, that law enforcement records pertaining to children between the ages of 10 and 17 are not open to public inspection, law enforcement records pertaining to children less than ten years of age may also be excepted from disclosure."¹ We disagree.

¹The Seventy-fourth Legislature, in House Bill 327, has significantly amended portions of the Family Code governing access to juvenile records, including the repeal of section 51.14 and its substantial revision in chapter 58 of the Family Code, effective January 1, 1996. See Act of May 27, 1995, ch. 262, §§ 53, 100, 105, 1995 Tex. Sess. Law Serv. 5127 (Vernon). We do not address in this ruling the extent to which these recent amendments to the Family Code will affect requests for this type of information that are made on or after January 1, 1996.

Section 51.14(d) of the Family Code provides:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Section 51.02 provides that in title 3 of the Family Code "child" has the following meaning:

- (1) "Child" means a person who is:
 - (A) ten years of age or older and under 17 years of age; or
 - (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Title 3 of the Family Code governs delinquent children and children in need of supervision. However, a child cannot be declared to be a delinquent child subject to a proceeding under title 3 unless he is within the age limit set forth in the statute. *See Steed v. State*, 183 S.W.2d 458, 460 (Tex. 1944); *Ballard v. State*, 192 S.W.2d 329, 330 (Tex. Civ. App.--Amarillo 1946). The information report in question concerns two juveniles both age eight. Accordingly they are not within the definition of "child" for purposes of section 51.14(d). You may not withhold the requested information under section 552.101 as information made confidential by statute.

Section 552.101 also incorporates the common-law doctrine of privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We have reviewed the information report submitted for our consideration. We believe that there is a legitimate public interest in the document. *See also* Open Records Decision No. 628 (1994). Accordingly, you may not withhold the requested record under the common-law privacy doctrine as incorporated by section 552.101 of the Government Code.

The department also claims that the requested information may be excepted from required public disclosure under section 552.108 of the Government Code. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (list of factual information available to the public) (copy enclosed).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You claim that the information report may be withheld as "a record of a law enforcement agency dealing with the detection, investigation or prosecution of a crime." You further claim that "[a]s a general rule, evidentiary information relating to a pending criminal case may be withheld by a law enforcement agency under this exception." Due to the juveniles' ages, however, no criminal charges may be filed. Accordingly, we do not see how there can be "detection, investigation, or prosecution of a crime" where no crime has been committed. Your claims concerning evidentiary information do not apply either since there is no criminal case. We do not, therefore, believe that the information report can be considered part of an active investigation. As you do not explain how release of this information would unduly interfere with law enforcement and crime prevention, you may not withhold the requested records under section 552.108 of the Government Code. *See generally* Open Records Decision No. 422 (1984) at 2 (details of attempted suicide may not be withheld under section 552.108). Accordingly, you must release the requested records in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/rho

Ref.: ID# 27356

Enclosures: Submitted documents
Open Records Decision No. 127

cc: Mr. Virgil West Watson
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(w/o enclosures)